

the security limits under § 1043.2 (b)(1) or (b)(2).

Form BMC 90 endorsement will be used with each filing of Form BMC 91 or Form 91X certificate with the Commission which certifies to coverage not governed by the requirements of the Department of Transportation.

Form BMC 91MX certificate of insurance will be filed to represent any level of aggregation for the security limits under § 1043.2(b)(4).

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

9. The authority citation for 40 CFR part 1084 would be revised to read as follows:

Authority: 40 U.S.C. 10101, 10321, 11701, and 10927; and 5 U.S.C. 553.

§ 1084.2 [Amended]

10. Section 1084.2 is proposed to be amended by removing paragraph (a) and the designation (b).

11. Section 1084.3 is proposed to be revised to read as follows:

§ 1084.3 Limits of liability.

The prescribed minimum amounts for public liability security referred to in § 1084.2 are identical with these minimum limits prescribed for motor carriers in § 1043.2 of this chapter.

§ 1084.4 [Amended]

12. Section 1084.4 is proposed to be amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

13. Section 1084.7(a) is proposed to be revised to read as follows:

§ 1084.7 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will give consideration to and will approve the application of a freight forwarder to qualify as a self-insurer if such freight forwarder furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such freight forwarder to satisfy its obligations for bodily-injury liability and property-damage liability without affecting the stability or permanency of the business of such freight forwarder.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018-AB38]

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Lepidium barnebyanum* (Barneby Ridge-Cress) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a Utah plant species, *Lepidium barnebyanum* (Barneby ridge-cress), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *L. barnebyanum* is known from one small limited population in Duchesne County, Utah. Continued uncontrolled off-road vehicle use and future development of oil and gas resources in the habitat of *L. barnebyanum* have the potential to cause the species to become extinct if adequate protective measures are not taken. This proposal, if made final, would implement Federal protection provided by the Act for *L. barnebyanum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 26, 1990. Public hearing requests must be received by January 11, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, botanist, at the above address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

In June 1947, a unique mustard was discovered by Rupert Barneby in the lower portions of Indian Creek Canyon in Utah's Uinta Basin. This plant was described first in the scientific literature as *Lepidium montanum* ssp. *demissum* (Hitchcock 1950). James Reveal reviewed the type specimen of *L. m. demissum* and obtained additional

specimens of that taxon from the type locality. As a consequence of his evaluation of this taxon, Reveal described the mustard as *Lepidium barnebyanum* (Reveal 1967).

The common name used for *L. barnebyanum* in the Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on September 27, 1985 (50 FR 39526), was "Barneby pepper cress." Stanley Welsh gave this species the common name of "ridgecress" in *A Utah Flora* (Welsh et al. 1987). The Service has adapted Welsh's common name because it is cress (mustard) endemic to ridges and has retained the specific epithet to honor the species' discoverer, thus the common name "Barneby ridge-cress." The Soil Conservation Service uses the common name "Barneby pepperweek" for this species.

L. barnebyanum is a perennial, herbaceous plant in the mustard family (Brassicaceae). It is approximately 2 to 6 inches (5 to 15 cm) high and usually forms raised clumps or cushions (pulvinate growth form) up to 8 inches (20 cm) wide. The species arises from a deep woody taproot; its stems are smooth and hairless with narrow leaves clustering at the base of the plant. The species' cream-colored flowers are about 0.25 inch (5 to 7 mm) across and alternate along a stem rising 1 to 2.5 inches (2.5 to 6 cm) above the base of the plant. The flowers begin to bloom in early May. *L. barnebyanum* seeds are quite small, about 1 mm across, and are borne in elliptical seed pods called siliques, which are about 0.2 inch (4 to 5 mm) long. The seeds are shed beginning in June and continuing into July.

The habitat of *L. barnebyanum* is a discontinuous series of marly shale barrens on three ridgelines on either side of Indian Creek on the northeast margin of Indian Creek Canyon about 3 miles south of Starvation Reservoir and the town of Duchesne, Utah. The species' habitat occurs at an elevation of 6,200 to 6,500 feet (1,850 to 1,950 m) on poorly developed soils derived from marly shales in a zone of interbedding geologic strata from the Uinta and Green River Formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989). The vegetation of the shale barrens, on which *L. barnebyanum* occurs, is dominated by plant species with pulvinate growth forms including: *Hymenoxys acaulis*, *Arenaria hookeri*, *Townsendia mensana*, *Parthenium ligulatum*, and *L. barnebyanum* itself. Other associated plant species include: *Eriogonum batemanii*, *Astragalus*

spatulatus, and *Castilleja scabrifolia*. The shale barren pulvinate plant community of *L. barnebyanum* is a small inclusion within the broader pinon juniper woodland community, dominated by pinon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*) which characterize the general area (Welsh 1978, U.S. Fish and Wildlife Service 1989).

L. barnebyanum is known from one population with three distinct stands with a total range that is about 4 miles across on the Uintah and Ouray Reservation (Reservation) of the Ute Indian Tribe (Tribe). The entire population of *L. barnebyanum* is experiencing or vulnerable to off-road vehicle damage and is directly adjacent to active oil and gas fields. Continued unrestricted off-road vehicle use and future development of those oil and gas fields is likely to jeopardize the continued existence of this species unless specific measures are taken to protect the occupied habitat of *L. barnebyanum*. The total population of *L. barnebyanum* is estimated to be about 5,000 individuals with an occupied habitat of less than 500 acres (U.S. Fish and Wildlife Service 1989).

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report as a petition to list those taxa named therein under Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act), and its intention to review the status of those plants. *L. barnebyanum* was included in the July 1, 1975, notice on list "A" as endangered.

L. barnebyanum was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909). The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, though proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal

that had not been made final (44 FR 70796), including *L. barnebyanum*.

The July 1975 notice was updated by notices in the *Federal Register* on December 15, 1980 (45 FR 82430), and again on September 27, 1985 (50 FR 39526). Both of the later notices included *L. barnebyanum* as a category 1 species. Category 1 comprises taxa for which the Service presently has significant biological information to support their being proposed to be listed as endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Since the 1975 Smithsonian report and the Service's 1980 and 1985 notices were accepted as petitions, all the taxa contained in those notices, including *L. barnebyanum*, were treated as being newly petitioned on October 13, 1982. The deadline for a finding on such petitions, including that for *L. barnebyanum*, was October 13, 1983. Beginning on October 13, 1983, the Service has made successive 1-year findings that the petition to list *L. barnebyanum* was warranted, but precluded by other listing actions of higher priority. This proposal constitutes the next 1-year petition finding for this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lepidium barnebyanum* Reveal (Barneby ridge-cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The past distribution of *L. barnebyanum* is unknown (Welsh 1978). The species is evidently a narrow soil endemic, being restricted to a white-colored marly shale lens near the contact of Green River and Uinta geologic formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989). Similar shale barren habitat occupied by many of the same species sympatric with *L. barnebyanum*

(see "Background" section above) have been searched for additional populations of *L. barnebyanum* in the Uinta Basin of northeast Utah and adjacent Colorado; however, no populations of the plant are known except for the one in the northern portion of Indian Creek Canyon (Reveal 1967, Welsh 1978, U.S. Fish and Wildlife Service 1989). The total population of *L. barnebyanum* is estimated to be about 5,000 individuals on marly shale barrens on three ridgelines in the northeast portion of Indian Creek Canyon in Duchesne County, Utah (U.S. Fish and Wildlife Service 1989).

The occupied habitat of *L. barnebyanum* is being impacted by trampling from off-road vehicles such as motorcycles and four-wheeled all-terrain vehicles which concentrate on the sparsely vegetated ridgelines which are *L. barnebyanum*'s only habitat (U.S. Fish and Wildlife Service 1989). In addition, the habitat of *L. barnebyanum* is adjacent to a developed oil and gas field with several wells within 5 miles of the species' habitat. The location of the sites of *L. barnebyanum* habitat on the top of relatively level ridgelines in an area of very steep general topographic relief exposes those populations to an increased likelihood of habitat destruction from off-road vehicle trail riding, and road and well site construction in connection with oil and gas development (Welsh 1978, U.S. Fish and Wildlife Service 1989). With such a small population and limited occupied habitat, any destruction, modification or curtailment of the habitat would have a highly negative impact on the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threats to *L. barnebyanum* from overutilization for commercial, recreational, scientific, or educational purposes are currently known.

C. *Disease or predation.* No significant threats to *L. barnebyanum* from disease or predation are currently known.

D. *The inadequacy of existing regulatory mechanisms.* *L. barnebyanum* is not currently protected by any Federal or State law or regulation. The Bureau of Indian Affairs is aware of the precarious status of this species and as a matter of policy attempts to direct activities which may threaten the species away from its habitat on the Uintah and Ouray Reservation of the Ute Indian Tribe. However, the Bureau of Indian Affairs lacks the explicit, statutory authority necessary to protect the species. The listing of *L. barnebyanum* will significantly assist the Bureau of Indian

Affairs in providing for the protection of this species and its habitat and will encourage active management through the "Available Conservation Measures" discussed below.

E. Other natural or manmade factors affecting its continued existence.

Compared to closely related taxa in the same genus, recent studies have shown *L. barnebyanum* to have a reduced seed/ovule ratio, i.e., a smaller percentage of ovules (embryonic seeds) becoming mature seeds (C. Davern, University of Utah, pers. comm., 1988). This would tend to lower reproductive success and reduce population viability. The restricted range and population of *L. barnebyanum* increases the possibility that inadvertent disturbance, either natural or man caused, could destroy a significant portion of this species' population and habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *lepidium barnebyanum* as endangered. The species is threatened by surface disturbance that is currently occurring from off-road vehicles and will probably intensify in the near future and by future energy development within its habitat. These factors could cause the species to become extinct within the foreseeable future throughout all or a significant portion of its range. Given the species' highly restricted distribution and the likelihood of future habitat destruction, the proposed designation of endangered is considered by the Service to be a more prudent designation than threatened for *L. barnebyanum*. For the reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for *L. barnebyanum* is not prudent because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *L. barnebyanum* occupies limited habitat on the top of three relatively level ridgelines. Designation of critical habitat would entail publication of a detailed description and map of this habitat in the **Federal Register**, exposing the

species to the threat of vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize the single small *L. barnebyanum* population with an off-road vehicle.

Moreover, few additional benefits would be provided to the species by the critical habitat designation that would not already be provided by listing the species as endangered, particularly as the entire population is located on lands under Federal jurisdiction. Any Federal action that would impact the plant's habitat would affect the plants as rooted organisms and, consequently, would be addressed through section 7 consultation. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any such area. The Tribe, Bureau of Indian Affairs, and Bureau of Land Management are aware of the occurrence of *L. barnebyanum* on Tribal lands and of their obligations under the Act. Protection of species' habitat will also be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, Indian, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed

critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The entire known population of *L. barnebyanum* is on the Uintah and Ouray Reservation of the Ute Indian Tribe. The Bureau of Indian Affairs is responsible for assisting the Tribe in the resource management of Reservation lands and as such would be responsible for the conservation of the plant on Tribal lands under authority of the Act. The Bureau of Land Management is responsible for the leasing of minerals under Federal jurisdiction, including those on Indian reservations. Both of these Federal agencies would be responsible for ensuring that land actions in general, and those associated with mineral leasing specifically, are not likely to jeopardize the continued existence of *L. barnebyanum*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *L. barnebyanum* since the species is not common in cultivation or in the wild. Requests for

copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *L. barnebyanum*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the

Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see ADDRESSES above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

- Hitchcock, C.L. 1950. On the subspecies of *Lepidium montanum*. *Madroño* 10:155-159.
 Reveal, J.L. 1967. A new name for a Utah *Lepidium*. *Great Basin Naturalist* 27(3):176-181.
 U.S. Fish and Wildlife Service. 1989. *Lepidium barnebyanum* status report. Salt Lake City, Utah. 4 pp.
 Welsh, S.L. 1978. Status Report: *Lepidium barnebyanum*. Brigham Young University Herbarium, Provo, Utah. 4 pp.

Welsh, S.L., N.D. Atwood, S. Goodrich, L.C. Higgins. 1987. A Utah flora. *Great Basin Naturalist Memoirs*, Number 9. 894 pp.
 Welsh, S.L., and J.L. Reveal. 1977. Utah flora: Brassicaceae (Cruciferae). *Great Basin Naturalist* 37(3):279-365.

Author

The primary author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524-4430 or FTS 524-4430, see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1362-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

SPECIES		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard Family						
<i>Lepidium barnebyanum</i>	Barneby ridge-cress (-pepper cress)	U.S.A. (UT)	E		NA	NA

Dated: October 23, 1989.

Sam Marler,

Acting Director, Fish and Wildlife Service.

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